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BY THE HOUSE OF DELEGATES,
February 15th, 1847.

Read and ordered to be printed.

REPORT

OF

B. C. WICKES, ESQ.,

FROM THE

MAJORITY OF THE COMMITTEE ON THE JUDICIARY,

RELATIVE TO

BIENNIAL SESSIONS.

REPORT.

We the undersigned a majority of the committee on the Judiciary to which was referred instructions "to report whether any further changes in the existing constitution and laws of this State would be rendered necessary by the confirmation of the act passed December session 1845, chapter 269; and especially whether provision should be made for calling together the General Assembly of Maryland, in the year 1850, and every sixth year thereafter for the purpose of ascertaining the result of the election for Governor, and in case of a tie in the vote of the people, of electing a governor by joint ballot, according to that part of the constitution as established by the act of December session 1836, chapter 197, section 22, and also whether said act of 1845, chapter 269, ought not to be so amended, that the election for senators and members of the House of Delegates should take place in the same years, and also whether the first section of the act of 1838, chapter 411, providing that all future sessions of the General Assembly of this State, shall close on the 10th of March, be or be not repealed by said act of 1845, chapter 269, called the "Biennial Session Law," respectfully present, that upon a close examination of this subject they are fully convinced that no "further changes in the existing constitution and laws of the State are rendered necessary by the confirmation" of the said act.

Aware however, that a different opinion has prevailed to some extent and especially that new provisions "for the purpose of ascertaining the result of the election for Governor in 1850, and every sixth year thereafter," as also for the future election of senators are thought by some to be *peremptorily demanded* by the confirmation of the act aforesaid. We feel called upon to refer briefly to those clauses of the constitution upon which we have founded our conclusion.

The 21st and 22d sections of the amended constitution direct that the returns of the election for Governor be made to the Senate, to whom it is given to determine "all questions in relation to the number or legality of the votes given for each and every person voted for as governor, and in relation to the returns, and in relation to the qualifications of the persons voted for as Governor,"

and in case of a tie "then the Senate and House of Delegates, upon joint ballot shall determine which one of them shall be Governor." Such is in part the substance of the sections referred to, and though in 1850, a Governor is to be chosen, when by the act of 1845, chapter 269, there will be no *regular* session of the General Assembly, yet by that clause of the 29th article of the constitution which says that the *Governor* "shall if necessary call together the General Assembly before the time to which they shall in any manner be adjourned," we think that unless your future Executives shall prove unmindful of their trust or recreant to their duty, (which may not be presumed,) the case is fully and plainly provided for—if therefore the 29th article above referred to has not been overlooked by those who urge this objection to the Biennial Law, we are at a loss to determine the ground of their difficulty, unless indeed it be found in that line of the 3rd section of the amended constitution which speaking of Senators proceeds thus:—"Whose term of office shall commence on the day fixed by law for the commencement of the regular session of the General Assembly next succeeding such election." If therefore (as may at first appear) the above clause relates to the term of office of senators generally, then indeed some alteration is essential. For in 1850, when the term of office of one-third of the present Senate shall have expired, there will be but two-thirds of a Senate left, since the term of office of those elected to fill the vacancy cannot by the above construction commence till the last Monday of December 1851, the day fixed by law for the commencement of the regular session of the General Assembly next succeeding their election, and thus no General Assembly would exist either to determine upon the result of the election for Governor, or for any other emergency for which the then Governor might deem necessary to convene them. But a second reading of the section referred to, will show that the clause above quoted relates specially to the election of Senators for 1838, and that the term of office of all Senators to be thereafter elected commences at the moment the seats are vacated which they are elected to fill, and we would refer for the correctness of this construction not only to the section generally, but especially to the last clause which is in these words, "and elections shall be held in the several counties and city from which the retiring Senators come to supply the vacancies as they may occur in consequence," &c.

That some alteration also in the election of Senators is rendered absolutely essential by the confirmation of the biennial law, seems to be an opinion as vague as it is general; if it is founded upon a misconstruction of that clause of the 3rd section above referred to, which relates to the commencement of the terms of office of Senators, the objection is already answered; what other constitutional grounds of difficulty there may be, having never heard them specified, we are at a loss to conjecture. If then the constitution already provides for the uninterrupted existence of a Senate, and makes it the duty of the Governor to convene the Legislature

whenever necessity may require, having heard no other alterations suggested as essential, and having been unable to detect any inconsistencies between the act under consideration, and the existing constitution and laws of this State, we think ourselves sustained in the opinion expressed at the beginning of this report, that "no further changes in the existing constitution and laws of this State, are rendered necessary by the confirmation of the said act."

But while we feel no hesitation in denying the necessity, we feel as little in acknowledging the convenience and policy of certain changes, which in obedience to instructions, we have considered, and would humbly suggest:

By the existing constitution and laws of the State, as already observed, the Executive will be compelled by the confirmation of the act under consideration, to call together the General Assembly in 1850, and every sixth year thereafter, to determine upon the result of the election for Governor.

But the act of 1845, chapter 269, being principally designed as a fiscal measure, this end would doubtless be more fully attained by avoiding the necessity above referred. To effect this, the mode which immediately strikes the mind as most direct and simple, is hereafter to extend or abridge the Governor's term of office one year, this while it would fully meet the difficulty referred to, would also cure all incongruities which may result from biennial appointments, and an executive term of three years.

But aware that this is considered by many a change of at least doubtful propriety, and of such importance as to require an expression of public sentiment previous to its adoption, we do not advise but merely suggest it, as one of the modes by which many of the objections made by the opponents of the bill under consideration, would be fully met.

Another mode which presented itself to our minds as worthy of some consideration, and which we therefore deem proper to suggest, was that hereafter the returns of the election for Governor be made to the Chancellor, and that it be given to him instead of the Senate to publish the result, and this suggestion was recommended for a moment to our notice, not so much by the high character which the incumbent of so elevated an office is even likely to bear, but as a simple proposition of convenience, for the publication of a result already known, and which any attempt to suppress, or disguise must needs be detected, is we think a mere formality to be entrusted to any hands which convenience may point out.

Having been induced for a moment to entertain this plan as tending to effect the most rigid scheme of economy proposed by the bill under consideration, we deemed proper to mention it merely as one of the modes by which some of the most urgent objections to the said bill, would be readily met. But while we have taken the liberty of suggesting the different alterations which presented themselves to our own minds, we would after much consideration advise for the adoption of the House a plan, which while it may not so scrupulously correspond with the financial fea-

ture of the biennial law, will yet be a departure so slight that it cannot even shock the nerves of the most sensitive economist. The plan proposed is, that on those years in which by the law of 1845, chapter 269, there will be no session of the General Assembly, the *Senate* convene for a limited period to confirm appointments, determine as now the result of the election for Governor, and to exercise all other powers with which as a distinct body they are now invested. This it is evident while it calls for no alteration whatever in the present mode of making returns of the election for Governor, not only corrects all incongruities of biennial appointments, and an executive term of three years, but provides against all necessity for such appointments.

The case of a tie is another of the possible contingencies which we think is fully provided for by the authority which the Governor already has to convene the Legislature, whose duty it is in such case to elect upon joint ballot. We therefore proceed to another clause of the instructions copied at the beginning of this report, by which we are called upon to enquire, "whether said act of 1845, chapter 269, ought not to be so amended, that the election for Senators and Members of the House of Delegates, should take place in the same years." That the election of both branches of the General Assembly should take place at the same time if convenient, regarded as a mere proposition of order commands the assent of every mind, but there appears to the majority of your committee another mode than that suggested, in the instructions of accomplishing this end, better adapted to their taste, simple in its arrangement, immediate in its operation, and more in accordance with the time of our congressional elections than would result from an amendment of the act of 1845, to correspond with the election of Senators as now provided. The method alluded to is simply to prolong the term of office of each and every member of the present Senate, one year. This arrangement while it can but slightly inconvenience the present incumbents, since during the year which each one will hold over, there will be no *regular session* of the General Assembly, will yet provide for the uninterrupted existence of a Senate, while it will immediately throw the future election of Senators upon the odd years, with the election of the House of Delegates; whereas, if as suggested in the instructions, the bill referred to was so amended as to throw the election of delegates upon the even years, its operation would not only be necessarily retarded, and its passage perhaps eventually lost, but it would necessarily produce one of two results, (alike to be avoided,) as incident to the alteration or not of the time of holding our congressional elections. The same frequency of elections which now exists, would result from *no* alteration, while on the other hand, the same objection which we are now endeavoring to remedy, as applicable to Senators taking their seats a year after their election, would result from such alteration, as would make the time of the congressional elections correspond with the supposed amendment of the bill.

As regards the instruction to enquire "whether the first section of the act of 1838, providing that all future sessions of the General Assembly of this State, shall close on the 10th day of March, be or be not repealed by said act of 1845, chapter 269."

Though called upon simply to express our opinion that the first section of the act referred to is not in any manner repealed by the said act of '45. We would also take the liberty of further adding that any repeal of the section above referred to would in our judgment not only be uncalled for by the confirmation of the act of '45, but altogether impolitic, as tending to defeat the leading object of the Biennial Law, which as before observed is of a fiscal character.

Such briefly is the result of our considerations, and such the alterations which in obedience to our instructions, we would respectfully submit. And while we frankly acknowledge that much has doubtless escaped our notice, which convenience may suggest. We feel gratified to report as the result of our consideration, that the bill of 1845, chapter 269, "renders *necessary* no further changes in the existing constitution and laws of the State;" and therefore while we would advise its passage without any alterations or amendments whatever, we would also beg leave in accordance with the views above expressed, to offer the following bill, the adoption of which, though convenience may commend, *necessity* does not require.

B. C. WICKES,
THOS. DUCKETT,
P. B. HOPPER, JR.,
JOHN H. DONE.

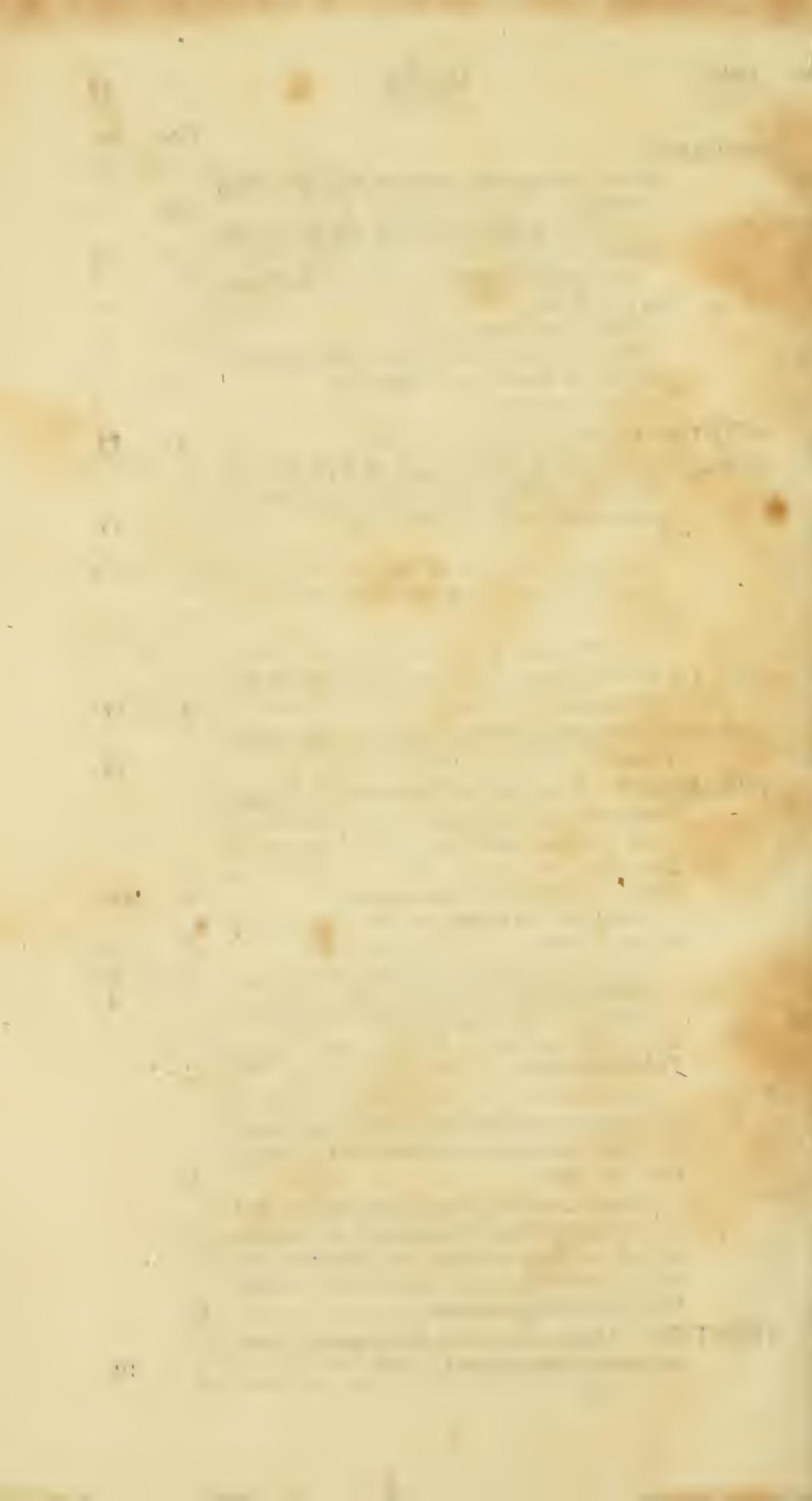
A BILL

Entitled, an act supplementary to an act, entitled, "an act to alter and amend the Constitution and form of government of Maryland, so as to substitute biennial for annual sessions of the Legislature, and for other purposes," passed at December session, 1845.

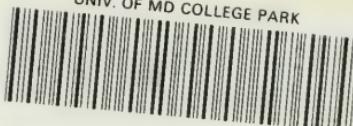
Section 1st. Be it enacted by the General Assembly of Maryland, That section 4 of the act of December session, 1845, chap. 269 be and the same is hereby repealed.

Section 2d. And be it enacted, That the term of office of each and every member of the present Senate, be and the same is hereby prolonged one year, and that the elections to supply the vacancies as they may regularly occur by this extension of their term of service, and all future vacancies forever hereafter, shall be held on the first Wednesday of October, in each and every year, in which such vacancies shall happen, and that the term of office of all Senators to be hereafter elected shall be six years; provided, that nothing in this section contained shall apply to the election or to the continuance in office of Senators to fill unexpired terms.

Section 3d. And be it enacted, That on the day of in the year 1848 and on the same day of every second year forever thereafter the Senate shall convene and shall remain in session from day to day for a period not exceeding days; during which session they shall be clothed with all the powers with which as a distinct branch of the General Assembly, they are now invested, and upon the first day of their meeting, the Governor shall make to them such communication in regard to the general condition of the State and its finances, as he is now required to make to the General Assembly, and he shall during such session furnish them, for their advice and consent, such appointments annual or other, as were required before the passage of the act of 1845, chap. 269.



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